

**City of Miami Beach - City Commission Meeting
Commission Chambers, 3rd Floor, City Hall
1700 Convention Center Drive
December 9, 2002**

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Mayor David Dermer	Present
Vice-Mayor Simon Cruz	Present
Commissioner Matti Herrera Bower	Absent
Commissioner Luis R. Garcia, Jr.	Present
Commissioner Saul Gross	in at 5:17 p.m.
Commissioner Jose Smith	Present
Commissioner Richard L. Steinberg	Present - out at 7:26 p.m.

City Manager Jorge M. Gonzalez
City Attorney Murray H. Dubbin
City Clerk Robert E. Parcher

City Commission Workshop

ADVERTISED NOTICE:

To provide information and receive public input on existing litigation with West Side Partners, Ltd., East Coastline Development, Ltd., and related Portofino entities, involving development of the Goodman Terrace and Hinson Parcels, the Alaska Parcel, and portions of Block 1, 51, and 52 in the South Pointe area, and to discuss possible settlement scenarios in connection therewith. These scenarios include, but are not limited to, the City receiving a substantial portion of the Alaska Parcel at the southern tip of South Pointe as well as a portion of the Hinson Parcel, for public parkland, in exchange for a portion of the Federal Triangle, and consideration of additional development rights on the subject parcels.

This public workshop meeting is in furtherance of settlement discussions concerning all pending litigation. Accordingly, nothing said, or prepared, or presented graphically or in writing for or at the workshop or concerning settlement, shall be used in any litigation relating to or arising out of such workshop, settlement discussions, or in existing or future litigation between the parties.

Meeting called to order at 5:10:19 p.m.

Mayor Dermer stated that it was the feeling of the City Commission to make this process as public as possible and to let everyone know what the options are and to get public input. He requested Murray Dubbin, City Attorney, to give a history of the issues.

Murray Dubbin, City Attorney, stated that this issue is a chapter of a long dispute that arose in a transaction that took place in 1982, and litigation in the South Shore area between the various contractors and the City. The City and the RDA have been involved in this dispute since 1982, but the present matter before this Commission originated in 1998. There are four pieces of litigation: 1) The West Side litigation, referred to as "Portofino properties; 2) Seven pending claims made under the Burt J. Harris Act, 3) A claim for breach of contract with the developer in 1996 and 4) Claims with the East

Coastline Developer, referred to as the "Portofino Syndrome." Westside East Coastline are the developers of the Goodman and Hinson parcels and are the owners of the Alaska parcel. There are several lawsuits because the developer basically complained that the City should have granted zoning rights that were applied for by the developer. In one of the cases the judge order mediation. The mediation process has been going on for at least two (2) years. There have been several mediation conferences and Closed Executive Sessions. Mediation proceedings are confidential proceedings. If there is progress, it has to be reported to the City Commission via a Closed Executive Session. The City Commission realized that this type of dispute was not going to be resolved without total input from the community. Both parties have agreed that whatever is said during the course of this proceeding can never be used in a court of law to prejudice one party or the other. The mediation process is being extended and making it a public mediation progress.

Mr. Cliff Schulman, Esq., Greenberg Traurig, et al., agreed with Mr. Dubbin that nothing presented in this meeting would ever be used in court or other adjudicatory proceedings.

Jorge Gomez, Planning Director, gave an overview of the history of the land and the zoning changes that have taken place. One of the areas he highlighted was under the present FAR's for the Goodman, Hinson, and the Alaska assemblage there is approximately 288,000 square feet of floor area available. The floor area allowed prior to the down zoning in 1997 was approximately 464,000 square feet. At the time of the rezoning when they wanted all of the parcels to be CPS 3 that would have represented about 625,000 square feet.

Mr. Cliff Schulman, Esq., Greenberg Traurig, et al., introduced his partner Matt Gorson, Mr. Parker Thompson, John Fullerton and Julio Diaz, Fullerton and Diaz Architects, and Cathy Colonnese with the Portofino Group and the Portofino Entities. He stated that he is here today to try to inform this Commission and the public on Portofino Entities position, the proposal, the rational, and to listen to the Commission and the public. He stated that in the event the City is totally victorious, 100% victorious, the Alaska parcel is legally entitled today to have 32,000 square feet of commercial development and accompanying parking that can be 40 feet high. The Hinson and Goodman Terrace parcels today can have a 25 story high rise, with approximately 250,000 square feet of development and arguably, if the City wins, a 75 foot baywalk. If Portofino wins everything it is asking for on the Alaska parcel there will be a 25 story building and on the Goodman Terrace and Hinson parcel there will be approximately a 40 story building with anywhere between 650,000 to 728,000 square feet of development with virtual no public space, not even a baywalk. In 2001, Fullerton and Diaz put together a concept plan. The concept plan will be show again today. Below is the plan presented to the Commission in 2001 and the plan presented today. Mr. Schulman presented the charts below.

Comparison	2001	2002
South Pointe	50' narrowing to 25'	220' narrowing to 75'
Public access	.4 Acres= 2.8 % of site	1.62 Acres=46 % of site
FAR on Alaska	.97	.1

Slip	No slip	Majority of slip maintained
Stories	37 stories	38 stories
Hinson Bayfront	Private	Public Space (swap)
Federal Triangle	Excluded	Swap
Alaska Development	8 story-residential (86') 3 story-residential (32') 5 story parking (45')	2 story commercial 2 story-residential 6 story parking (56')
Max. Height of Development on the Alaska parcel.	86'	56'

Julio Diaz, Architect, showed three (3) site plans.

Mayor Dermer explained that Commissioner Bower was serving in Tallahassee on the Governor's Committee for Literacy, and extended her apologies for not attending the Workshop.

John Shubin, Attorney from the firm of Shubin & Bass, representing Jerry Blair, spoke.

Ira Elegant spoke.

Mayor Dermer asked Jorge Gomez what can currently be done with the properties?

Jorge Gomez, Planning Director, stated that the Julio Diaz, architect, showed a site plan that basically shows the development potential of the two sites as it exists today. On the Alaska parcel there is a 40-foot height limit. On the Goodman and Hinson parcel there is approximately 250,000 square feet building could be built or between 25 to 27 stories.

Frank Del Vecchio spoke.

Jerry Blair, president from the Portofino Towers Association, spoke

Morris Khan spoke.

Gil Zriny spoke.

Erika Brigham submitted color photos of Battery Park, and spoke.

Juan Cobia spoke.

Joyce Garrett spoke.

Madeline Lang spoke.

Bea Kalstein spoke.

Dr. Morris Sunshine spoke.

Mark Needle spoke.

Mayor Dermer recognized Mark Needle and credited him for his work regarding this issue.

David Kelsey spoke.

Christina Labuzzeta spoke.

Michael Kappman spoke.

Roberta Akino spoke.

Tom Martin spoke.

Laura Jamieson spoke.

Clifford Schulman spoke.

Commissioner Garcia stated that the City is in a very difficult situation now because of the lack of foresight of the previous Commissions. He would like to see a park there. He added that the City should keep negotiating. He asked Mr. Dubbin what the City had spent on attorney's fees.

Mr. Dubbin responded that the City has paid approximately \$750,000 on outside counsel and if the Legal Department's cost were included it could easily double the \$750,000.

Vice-Mayor Cruz stated that the City needs to look at the issue of concurrency. The City is getting very congested. This issue is not based on the obstruction of views from buildings but on concurrency. This Commission needs to hear the alternatives from the community. This Commission is trying to be as conscientious as possible with this issue and needs to do what is in the best interest of the City overall. This Commission could have settled but respects its role and the public's role and invites the public to participate in the process. The question is what is in the best interest of the City as a whole.

Commissioner Smith stated that the easiest thing for this Commission to do is to let the courts decide the solution. The Commission is faced with a situation where a federal judge has asked the City to mediate the issues. This Commission cannot please everybody. This Commission has had a number of meetings and decided that it needs to hear from the public on this issue. Meetings behind closed doors is not in the public's best interest. This has been a helpful exercise and we have learned a lot from listening. This Commission appreciates the time and effort that went with this discussion. Obviously the deal on the table is not acceptable at this time.

Commissioner Steinberg thanked everyone for coming out and for the input given. This Commission wanted the public's input. He also thanked the opponents in the litigation

for allowing this forum to take place. He agreed with Commissioner Smith that the deal on the table needs further work and the negotiations should continue.

Commissioner Steinberg requested the Administration look into the issue on 5th Street and Alton Road to try to make a double left hand turn lane onto 395; he understands that this is planned for sometime in the future, but the City needs to find a way to have this done sooner rather than later, perhaps using RDA money could be advanced with the developer's agreement to pay it back in the future. **Fred Beckmann to handle.** He thanked the public for their input.

Commissioner Gross stated that he didn't get the feedback he was expecting. Whether the City wins or loses, the maximum building height is going to be 25-stories on the Hinson and Goodman parcels. He stated that he felt the focus of this meeting was to find out how important it is to the residents to have a baywalk and expanding South Pointe Park. He stated that the City might not end up with a continuous baywalk even if they win the lawsuit and requested clarification from the City Attorney.

Murray Dubbin, City Attorney, stated that there is another lawsuit dealing with this issue. There was an easement of record issued some years ago that contains language that makes the attorney feel the City could impose an obligation to give the City an easement around the Alaska parcel. The owners of the Alaska parcel are contesting this.

Commissioner Gross asked about the Hinson or Goodman parcels.

Murray Dubbin, City Attorney, and Gary Held, First Assistant City Attorney, stated that the Hinson parcel extends to the bay and even if the City wins the lawsuit, there is no provision for an easement for the baywalk.

Commissioner Gross stated that even if the City wins the lawsuit there is no guarantee there will be a continuous baywalk. At this time there is no provision for a baywalk on the Hinson parcel and the easement on the Alaska parcel is in dispute. One of the issues on the table today is to get a commitment to have a continuous baywalk. He thinks the public also wants a continuous baywalk. The second issue is that South Pointe Park stops at Washington Avenue and the idea is to expand the size of the park to the other side of Washington Avenue. The community has not answered these questions. He also stated that the City should consider fighting the developer, not legally, but strategically and gave the example of reviewing the DRI to see if the concurrency issue could be challenged. At this point in the process their needs to be some certainty rather than mixed messages. Maybe the City should hire a person who understands the development issues to look at Portofino's development rights. What are the true negotiating points?

Tom Augton, a resident of Portofino Towers spoke.

Matthew B. Gorson, Portofino Attorney, stated that he believes there is an easement on Hinson and he believes it is 25 feet wide not 50 feet. There is some questions as to the easement rights on the Alaska parcel. The issue is how can the City can get land back and what is the City trading for it. The issue is approximately two acres of land worth perhaps \$20M in exchange for ten (10) more stories. The developers are asking for ten (10) or twelve (12) stories; 14,000 sq. ft. per floor or 140,000 sq. ft. The entitlement

under the old zoning was 463,000 sq. ft. In exchange for the land that would be deeded to the City, the developer is asking for more square footage.

Mr. John Shubin, Law firm of Shubin & Bass, stated that there have been seven points that have repeatedly been made over the last five years, to which there has never been clarification:

1. The Hinson parcel: It has been asserted that a 50 ft. public easement exists as a matter of law. Mr. Gorson stated that it was 25 ft. and that needs to be clarified before a decision is made.
2. The Goodman parcel: It has been represented in the past that the north 50 ft of the parcel is limited to no more than 75 ft. in height. Is that true or not? This needs to be investigated.
3. There are questions as to whether or not the owners of the property can extinguish a public easement in favor of a baywalk on the Alaska parcel.
4. As to the Federal Triangle, there is a question as to whether the property can only be limited to a public use.
5. Are the properties subject to the more recent down zoning proposal? There has never been a definitive answer to this question. This needs to be answered.
6. Can the developer, as a matter of right, have parking on the Alaska parcel to support development on the CPS3. The developer says they have the right; the question is can it be used to support another project.
7. Can the development rights on the Alaska parcel be transferred as a matter of right to other parcels without any intervention by the Commission?

The Commission needs to answer these questions before considering going forward on this proposal.

Commissioner Garcia stated that the question is if the City is willing to trade height for parkland, and added that they should continue negotiations in trying to get the best deal for everyone.

Erika Brigham spoke.

Mayor Dermer asked the public to interact with the Commissioners. He also stated that it would be advantageous to his client and the City to have the baywalk built. This would be an added amenity that will help sell whatever will be built. He stated that this would buy a lot of goodwill in the community and also by having that extra amenity that people can walk and enjoy it. Mayor Dermer suggested that Mr. Schulman and his client consider giving more thought to the possibility of giving more land in exchange for the height or a little less height.

Meeting adjourned at 7:38:40 p.m.

Handout or Reference Materials:

1. Color photos of Battery Park
2. Document titled: Alaska Parcel Workshop, December 9, 2002, Issues Checklist.
3. Letter to Jorge Gomez, Planning Director, from Frank Del Vecchio, dated November 29, 2002, RE: Public Records Request
4. Notice of Ad in Miami Herald